

802.30(a)

November 7, 2005

Via Facsimile (202) 326-2624
Ms. Nancy Ovuka
Federal Trade Commission
Premerger Notification Office
Bureau of Competition, Room 303
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Telephone Call of November 1, 2005

Dear Ms. Ovuka:

I am writing to confirm the Hart Scott Rodino ("HSR") advice that you provided to me on November 1, 2005. In our telephone call, I posed the following scenario:

Company A is a 50% holder of the membership interests in a limited liability company, ("LLC"). Company B is the holder of the remaining (50%) membership interests in the LLC. The LLC owns Plant E and Plant W. Company A proposes to acquire 100% of Plant E and Company B proposes to acquire 100% of Plant W. The acquisition of Plant W is estimated to result in acquisition consideration of at least \$200,000,000. The acquisition of Plant E may not result in acquisition consideration in excess of \$53.1 million.

In our discussion, we focused on the intra-person exemption contained in 16 C.F.R. §802.30. From our discussion, I understand that because both Company A and Company B are both an acquiring and an acquired person that the intra-person transaction exemption applies to the acquisition of both Plant E and Plant W since "the acquiring and at least one of the acquired persons are, the same person by reason of §801.1(b)(1)...." §802.30(a). Consequently, it is my understanding that the acquisition of either plant as described is exempt.

Subsequent to our call, I learned that the plants are actually held in separate limited liability companies ("Plant E LLC" and "Plant W LLC") rather than in a single LLC as originally thought and that Company A and Company B indirectly each hold 50% of the membership

[REDACTED]

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interests of each of Plant E LLC¹ and Plant W LLC². Company A would be acquiring 100% of the interests in Plant E LLC and Company B would be acquiring 100% of the interests in Plant W LLC. Based on our prior call, it does not appear to me to change the result and that the transactions would still be exempt under the intra-person transaction exemption.

As the parties desire to execute the definitive agreement(s) for this transaction this week, please advise me as soon as possible, and in any event on or before November 10, 2005, if my understanding is incorrect and the parties would be required to file.

As always, we appreciate your assistance in this matter.

Very truly yours,
[REDACTED]

[REDACTED]

*Advised writer 11/8
that conclusion
is correct*

¹ Plant E LLC is currently two separate limited liability companies each of which are 50% owned by Company A and Company B. Prior to the acquisition these two limited liability companies will be merged together to form one entity, 50% owned by each of Company A and Company B.

² Plant W LLC is the 100% direct and indirect owner of additional entities.

[REDACTED]